

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

PLAINTIFF AND COUNTERDEFENDANT  
BENEFICIAL INNOVATIONS, INC.,

Plaintiff,

vs.

CAREERBUILDER, LLC., a Delaware corporation; CNET NETWORKS, INC., a Delaware corporation; THE DALLAS MORNING NEWS, INC., a Delaware corporation; DIGG, INC., a Delaware corporation; EBAUM'S WORLD, INC., a New York corporation; GOOGLE INC., a Delaware corporation; JABEZ NETWORKS, INC., a Tennessee corporation; MORRIS COMMUNICATIONS COMPANY, LLC, a Georgia limited liability company; THE NEW YORK TIMES COMPANY, a New York corporation; YAHOO! INC., a Delaware corporation; and YOUTUBE, LLC, a Delaware limited liability company,

Defendants.

CASE NO. 2:09-CV-175-TJW

**Jury Trial Demanded**

**PLAINTIFF AND COUNTERDEFENDANT BENEFICIAL INNOVATIONS, INC.'S  
REPLY TO COUNTERCLAIMS OF THE NEW YORK TIMES COMPANY**

Plaintiff and Counterdefendant Beneficial Innovations, Inc. hereby answers the counterclaims of Defendant and Counterclaimant The New York Times Company ("The New York Times"). All of the allegations of the counterclaims not specifically admitted herein are specifically denied.

## **ANSWER TO COUNTERCLAIMS**

### **JURISDICTION AND VENUE**

1. Plaintiff and Counterdefendant Beneficial Innovations admits the allegations of subject matter jurisdiction contained in paragraph 1 of The New York Times' Counterclaims.

2. Plaintiff and Counterdefendant Beneficial Innovations admits that venue is proper in this District Court.

3. Plaintiff and Counterdefendant Beneficial Innovations admits the allegations contained in paragraph 3 of the The New York Times' Counterclaims.

### **PARTIES**

4. Upon information and belief, Plaintiff and Counterdefendant Beneficial Innovations admits the allegations contained in paragraph 4 of The New York Times' Counterclaims.

5. Plaintiff and Counterdefendant Beneficial Innovations admits the allegations contained in paragraph 5 of The New York Times' Counterclaims.

### **FACTS**

6. Plaintiff and Counterdefendant Beneficial Innovations admits that it is the owner of all rights, title, and interest in the '943 patent through assignment.

7. Plaintiff and Counterdefendant Beneficial Innovations admits the allegations contained in paragraph 7 of The New York Times' Counterclaims.

8. Plaintiff and Counterdefendant Beneficial Innovations admits that there exists an actual and continuing controversy between Beneficial Innovations and The New York Times.

**COUNT I**  
**DECLARATORY JUDGMENT OF**  
**NON-INFRINGEMENT UNDER 35 U.S.C. § 271 (a)-(c)**

9. Paragraph 9 of The New York Times' Counterclaims re-alleges and incorporates by reference the allegations of paragraphs 1-8 of The New York Times' Counterclaims. Plaintiff and Counterdefendant Beneficial Innovations incorporates by reference its response to the allegations of paragraphs 1 through 8 above. Except as expressly admitted, Beneficial Innovations denies each of the allegations in paragraph 9 of The New York Times' Counterclaims.

10. Plaintiff and Counterdefendant Beneficial Innovations denies the allegations contained in paragraph 10 of The New York Times' Counterclaims.

11. Plaintiff and Counterdefendant Beneficial Innovations denies the allegations contained in paragraph 11 of The New York Times' Counterclaims.

**COUNT II**  
**DECLARATORY JUDGMENT OF**  
**PATENT INVALIDITY**

12. Paragraph 12 of The New York Times' Counterclaims re-alleges and incorporates by reference the allegations of paragraphs 1-11 of The New York Times' Counterclaims. Plaintiff and Counterdefendant Beneficial Innovations incorporates by reference its response to the allegations of paragraphs 1 through 11 above. Except as expressly admitted, Beneficial Innovations denies each of the allegations in paragraph 12 of the Times' Counterclaims.

13. Plaintiff and Counterdefendant Beneficial Innovations denies the allegations contained in paragraph 13 of The New York Times' Counterclaims.

**PRAYER FOR RELIEF**

Plaintiff and Counterdefendant Beneficial Innovations denies that The New York Times is entitled to the relief it seeks or any relief for the allegations made in its Answer and

Counterclaims. Plaintiff and Counterdefendant Beneficial Innovations requests that judgment be entered in its favor on all issues and it be awarded the appropriate damages, exceptional damages, costs, and attorneys' fees.

**Demand for Jury Trial**

14. Plaintiff and Counterdefendant Beneficial Innovations demands trial by jury of all issues.

Dated: November 25, 2009

Respectfully submitted,

By: /s/ Julien A. Adams

S. Calvin Capshaw  
State Bar No. 03783900  
Elizabeth L. DeRieux  
State Bar No. 05770585  
Capshaw DeRieux, LLP  
Energy Centre  
1127 Judson Road, Suite 220  
P. O. Box 3999 (75606-3999)  
Longview, Texas 75601-5157  
Email: ccapshaw@capshawlaw.com  
Email: ederieux@capshawlaw.com

Robert Christopher Bunt  
State Bar No. 00787165  
Email: cbunt@cox-internet.com  
Robert M Parker  
State Bar No. 15498000  
Email: rmparker@cox-internet.com  
Parker & Bunt, P.C.  
100 East Ferguson, Ste. 1114  
Tyler, TX 75702  
Telephone: 903/531-3535  
Facsimile: 903/533-9687

Of Counsel:

Gregory S. Dovel  
CA State Bar No. 135387  
Julien Adams  
CA State Bar No. 156135  
Dovel & Luner, LLP  
201 Santa Monica Blvd., Suite 600  
Santa Monica, CA 90401  
Telephone: 310-656-7066  
Facsimile: 310-657-7069  
email: greg@dovellaw.com  
email: julien@dovellaw.com

ATTORNEYS FOR PLAINTIFF  
BENEFICIAL INNOVATIONS, LLC

**CERTIFICATE OF SERVICE**

I hereby certify that all counsel of record who are deemed to have consented to electronic service are being served this 25<sup>th</sup> day of November, 2009, with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3). Any other counsel of record will be served by electronic mail, facsimile transmission and/or first class mail on this same date.

/s/ Julien A. Adams  
Julien A. Adams